

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

DORSEY HENDERSON and)
DORRIS L. HENDERSON,)
)
Plaintiffs,)
)
v.) **CIVIL ACTION NO. 11-00310-KD-B**
)
CITY OF FAIRHOPE, and)
TRENT SCOTT,)
)
Defendants.)

ORDER

This action is before the Court on the motion to dismiss with prejudice as to defendant Trent Scott filed by plaintiffs Dorsey and Dorris Henderson (doc. 27). The motion was not joined by all parties who have appeared. However, plaintiffs represent that opposing counsel is in agreement with the motion.

As an exception to Rule 41(a)(1) of the Federal Rules of Civil Procedure, Rule 41(a)(2) provides for voluntary dismissal “at the plaintiff's request only by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2). Thus the Court construes the motion to dismiss as a request for voluntary dismissal under Rule 41(a)(2). The Rule also states that “[i]f a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication.” *Id.* Scott did not file a counterclaim against the Hendersons. The Rule also states that “[u]nless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.” Because the Hendersons have moved to dismiss with prejudice, the order shall state that the action is dismissed with prejudice as to Scott.

Therefore, upon consideration of the motion and pursuant to the provisions of Rule 41(a)(2), of the Federal Rules of Civil Procedure, this action is **DISMISSED, with prejudice**, as to defendant Trent Scott.

Nothing in this Order is intended to, or shall be construed as, dismissing plaintiffs' claims against the remaining defendant City of Fairhope.

No other order concerning plaintiffs' claims against Scott shall be forthcoming except upon application by any party for final judgment, as prescribed by Rule 58, Federal Rules of Civil Procedure.

DONE and **ORDERED** this 6th day of January, 2012.

s / Kristi K. DuBose
KRISTI K. DUBOSE
UNITED STATES DISTRICT JUDGE